S.B.CIVIL WRIT PETITION NO.1939/2006

Rama
V.
The Board of Revenue & Ors.

Date of Order :: 24th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. L.S.Jodha, for the petitioner.
Mr. R.K.Thanvi, for the caveator.

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By order dated 25.4.2005 the Assistant Collector, Bheem, District Rajsamand while accepting an application preferred by the respondent plaintiff permitted to withdraw the suit preferred by him under Section 188 of the Rajasthan Tenancy Act, 1955. A challenge was given by the petitioner to the order aforesaid on the count that while permitting for withdrawal of the suit the trial court should have restored possession of the land that was taken over by the receiver from him. Learned Board of Revenue rejected the revision petition preferred by the petitioner holding therein that the order dismissing the suit on withdrawal was passed without any objection by the petitioner, thus, no error was committed by the trial court.

While giving challenge to the orders aforesaid it is contended by counsel for the petitioner that withdrawal of the suit was not

bonafide as by an interim order possession of the land in question was taken over from the petitioner by appointing a receiver and thereafter on withdrawal of the suit the trial court ordered to hand over possession of the land referred above to the recorded khatedar that is the respondent, as such according to counsel for the petitioner a practice was adopted just to get possession of the land in dispute without getting any adjudication of the dispute.

I have examined the orders impugned and also the record available.

From perusal of the report dated 30.9.2002 prepared by the receiver while taking over possession over the land in dispute it does not reveal that the land in question at the relevant time was in possession of the petitioner. Beside that it is pertinent to note that in reply to the application submitted by the plaintiff to withdraw the suit no objection was made by the petitioner. On the contrary, the petitioner claimed only cost for withdrawal of the suit. The relevant portion of the reply submitted by the petitioner to the application preferred by the plaintiff for withdrawal of the suit reads as follows:-

> "यह कि प्रतिवादीगण को मुकदमा लड़ने में 2000/-रू. फीस वकील, 2000/-रू. राजस्व रेकर्ड प्राप्त करने , 1000/-रू.

कागजी खर्च एवं 3000/-रूपया पेशियों पर आने जाने की वजह से धंधे का आर्थिक नुकसान का खर्च हुआ है। इस प्रकार कुलिया 8000/-रू. रिजनेबल खर्च हुआ है।"

Looking to the facts stated and discussed above, I do not find any error in the orders impugned that may warrant interference of this Court under Article 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.